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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-eighth session

SUMMARY RECORD OF THE 1458th MEETING

Held at the Palais des Wilson, Geneva,
on Tuesday, 20 March 2001, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ (Vice Chairman)

later: Mr. SHERIFIS (Chairman)

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eleventh periodic report of Bangladesh (continued)
Draft concluding observations concerning the fifteenth periodic report of Argentina (continued)
Draft concluding observations concerning the initial and second periodic reports of Japan

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Eleventh periodic report of Bangladesh (CERD/C/379/Add.1) (continued)

1. At the invitation of the Chairman, the delegation of Bangladesh resumed places at the Committee table.

2. The CHAIRMAN invited the Bangladeshi delegation to answer the questions put by Committee members at the previous meeting.

3. Ms. JAHAN (Bangladesh) said that members of minorities, like all other citizens, could stand for election to Parliament. Currently four members of parliament came from tribal communities and 12 from religious minorities. The delegation did not have any statistics on illiteracy levels among ethnic minorities, but the decennial census, which had just been completed, would provide valuable data on the subject.

4. Offenders had to compensate for or make good serious damage. The State could, *suo moto*, or at the application of the injured party, provide *ex gratia* compensation in cash or in kind. The Civil Procedure Code and Criminal Procedure Code made all acts of racial discrimination a punishable offence.

5. The implementation of the Chittagong Hill Tracts accord was being supervised by a National Task Force comprising three members. Many provisions of the accord had already been or were gradually being implemented. The most noteworthy progress included the setting-up of a ministry responsible for the affairs of the hill minorities, the establishment of a regional council, three local councils and a land commission, the introduction of special measures to assist the tribal population, the decision to amnesty all insurgents, the progressive withdrawal of security posts, etc. In its report for the year 2000, Amnesty International had regretted the slow implementation of the accord, but the latter covered many aspects and headway was not being made at the same pace in all fields. People returning to the region benefited from a whole package of support measures.

6. A question had been asked about the possible existence of illegal racist organizations. If the authorities learned of the existence of such organizations, they immediately referred the matter to the courts. There was no ethnic dimension to the problem of illegal migrant workers. At the initiative of Bangladesh, the South Asian Association for Regional Cooperation had drawn up a convention on the trafficking of women and children. The issue of castes did not have a racial character either and had to be seen in the light of the religious and cultural context. The modernization of society and economic changes were nibbling away at restrictions imposed by the caste system.

7. The Bangladeshi people constituted a multifarious society resulting from the intermingling of many ethnic groups during the past. "Pockets" were neither reservations nor

enclaves, but simply areas mainly occupied by certain tribes or groups of persons, who were completely free in their movements.

8. Tribal languages were employed locally but, for obvious economic reasons, more prevalent languages like Bengali or English were also widely used. Programmes in tribal languages were broadcast every day by the Chittagong radio station and sometimes on national radio.

9. Legislation setting up the national Human Rights Commission would probably be submitted to Parliament the following year. The idea of "positive discrimination" meant that special measures were taken to help the most backward sectors of society, including the tribal peoples. Many States, including developed countries, also resorted to such measures. Steps to promote the admission of students from tribal communities to higher education were not leading to a lower standard of knowledge and skills.

10. There could be no conflict between personal laws and general laws, for the former were governed by customary laws applying only to the members of various confessions and minorities. Modern society was increasingly aspiring to the application of the same laws to all citizens irrespective of their religion. Social reality still obstructed that ideal, although attitudes were changing. The term "Adivasi" meant tribal people in Bengali.

11. The national Human Rights Commission, which was to be set up in the near future, would be empowered to make recommendations to the Government on ways of improving the human rights situation in the country. The Act, which would specify the responsibilities of the Ombudsman, was still being studied and the office of the Swedish Ombudsman was assisting the Bangladeshi authorities in that matter. The conditions in which national and international non-governmental organizations operated were governed by a special Act.

12. The Rohingya were political refugees from Myanmar. The approximately 20,000 refugees still in Bangladesh would be repatriated to Myanmar in due course. The Governments of Bangladesh and Myanmar were working out the procedure for repatriation in bilateral discussions and in cooperation with the Office of the United Nations High Commissioner for Refugees. All legal foreign residents in Bangladesh could freely exercise all their rights. The quota system applying in some services and professional institutions did not concern religious groups. The existing quota of five per cent was reserved for ethnic minorities, in other words tribal peoples. "Citizenship" was a legal term found in article 6 of the Constitution, whereas "nationality" was a wider notion but, in practice, the two expressions were synonymous. The Bangladeshi Government would provide fuller information on the subjects of interest to the Committee in its next report.

13. Mr. SHAHI commended the quality of Bangladesh's eleventh periodic report and of the information supplied orally. Substantial progress had been made in the implementation of the Convention since the fifth and sixth reports.

14. The homogeneity of the Bangladeshi population was certainly fortunate for the country. At the same time, it was plain that the Government was not neglecting tribal communities, which constituted only 0.45 per cent of the total population. The report contained a detailed account of

measures taken to assist minorities living in the south-east of the country. He would like to know if special measures were also taken on behalf of the other small ethnic minorities living in other regions of the country. He hoped that, in its next report, the Bangladeshi Government would quote excerpts of those articles of the Penal Code which gave effect to the provisions of article 4 of the Convention. In that connection, he wondered whether, since independence, the Bangladeshi authorities had reviewed all national legislation to bring it into line with international human rights instruments, especially the Convention, since it seemed that, generally speaking, there was still much to be done to ensure the full implementation of the Convention. It would therefore be vital for the future national Human Rights Commission and the department of the Ombudsman to take steps to secure full compliance with the provisions of the Convention. In that respect, the Bangladeshi Government should, in its next report, explain what issues pertaining to the application of the Convention had been referred to the national Human Rights Commission and the Ombudsman.

15. Mr. MANNAN (Bangladesh) averred that the homogeneity of Bangladeshi society was a reality which, notwithstanding poverty, was one of Bangladesh's strengths. As the Committee members would have noted, small minorities were not forgotten and the affirmative action taken to promote their well-being was designed to preserve their distinctiveness. "Positive discrimination" was a term derived from international parlance. Preferential treatment was given to all minorities in all regions, including those living in the north and north-west of the country. The special arrangements applying to the hill tribes under the Chittagong Hill Tracts accord did not adversely affect the other tribal peoples. Legislation was being updated and Parliament had recently adopted an Act rescinding 215 obsolete pieces of legislation. The introduction of quotas reserved for members of tribal peoples in higher education and in medical and engineering colleges in no way impaired the quality of those establishments or the skills of future doctors and engineers.

16. Mr. BOSSUYT thanked the Bangladeshi delegation for its elucidation of the term "positive discrimination" and again emphasized that caution was required when using that term and applying its principle. Governments had to be careful that the implementation of special measures on behalf of one group did not clash with the principle of equal rights and opportunities.

17. Mr. PILLAI (Country Rapporteur) thanked the Bangladeshi delegation for its frank and detailed replies to Committee members' queries. During consideration of the report, attention had focussed on the peace accords in a region where most Bangladeshi ethnic minorities lived. In the Committee's opinion, implementation of the accords ought to be expedited, for the Bangladeshi Government should take advantage of the encouraging developments in the situation after the signature of those accords in order to benefit minorities.

18. The Committee had discussed the constitutional and legal provisions which made it possible to prosecute persons guilty of discriminatory acts. It was convinced that the State party must adopt special legislation enabling victims of racist acts to seek redress not only before the High Court, as they could already, but also before lower courts at local level. The Committee had recommended that the Law Commission, whose establishment had been announced by the delegation, be instructed to draft that text.

19. He welcomed the explanations provided by the Bangladeshi delegation with regard to positive discrimination and he hoped that the future national Human Rights Commission would play a leading role in protecting human rights in general and in combating discrimination in particular.

20. The CHAIRMAN thanked the Bangladeshi delegation for its fruitful dialogue with the Committee and announced that the Committee had completed its consideration of the eleventh periodic report of Bangladesh.

21. The Bangladeshi delegation withdrew.

The meeting was suspended at 10.55 a.m. and resumed at 11.05 a.m.

22. Mr. Sherifis took the Chair.

Draft concluding observations concerning the fifteenth periodic report of Argentina (CERD/C/58/Misc.14/Rev.2) (continued)

23. The CHAIRMAN said that before the Committee perused the draft concluding observations on Japan, Mr Valencia Rodríguez wished to call attention to some small improvements made to the draft concluding observations on the fifteenth periodic report of Argentina (CERD/C/58/Misc.14/Rev.2), which had been adopted the previous day.

24. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) said that after consultation with Mr. Bossuyt, he had reworded paragraph 24 to read: "The Committee recommends that the State party submit its 16th and 17th periodic reports jointly with the 18th periodic report on 4 January 2004, and that it address the points raised in the present observations". Paragraph 8, which had been transferred to the section on positive aspects, had been recast by Ms. McDougall to read: "The Committee notes that the Government's plans to hold an updated census ... have not been sufficiently resourced. The Committee encourages the Government to allocate the necessary resources to hold the census as soon as possible".

25. Mr. FALL and Mr. de GOUTTES proposed that the word "resources" in the second sentence of the paragraph be replaced with "measures necessary".

26. The CHAIRMAN said that if there were no objections, he would take it that the Committee approved the amendments proposed by the Rapporteur and Mr. Fall.

27. It was so decided.

28. Mr. SHAHI said that the Chairman had instructed him to ascertain whether Committee members wished to adopt draft concluding observations in a private rather than a public meeting. No consensus had emerged in favour of a departure from the Committee's usual practice. Some members had, however, expressed the wish that the permanent missions of the countries concerned be informed as soon as possible once concluding observations had been adopted by the Committee.

29. Ms. McDOUGALL announced that she had not been consulted by Mr. Shahi.

30. Mr. SHAHI said that he had not consulted all members for, after a few discussions, he had rapidly become convinced that consensus would be unattainable.

Draft concluding observations concerning the initial and second periodic reports of Japan (CERD/C/58/Misc.17/Rev.2, distributed at the meeting in English only)

31. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) stated that the draft concluding observations on Japan were relatively long on account of the complexity of the report, the delegation's replies and Committee members' comments.

Paragraph 1

32. Paragraph 1 was adopted.

Paragraphs 2 and 3

33. The CHAIRMAN proposed that the order of paragraphs 2 and 3 should be reversed.

34. Paragraphs 2 and 3, thus reversed, were adopted.

Paragraph 4

35. Mr. ABOUL-NASR proposed that the paragraph in question be deleted.

36. Paragraph 4 was deleted.

Paragraph 5

37. Mr. BOSSUYT proposed the deletion of point (iv) at the end of the paragraph, for it did not refer to a law and was therefore incongruous.

38. Paragraph 5, as amended, was adopted.

Paragraph 6

39. Mr. ABOUL-NASR asked whether the Burakumin had not been recognized as a minority as well.

40. Mr. PILLAI proposed that paragraph 6 be deleted, since the Ainu had been mentioned in the previous paragraph.

41. Mr. VALENCIA RODRIGUEZ recalled that the Japanese delegation had asserted that the Burakumin's difficulties were of a social nature and had nothing to do with racial discrimination. He added, backed by Mr. SHAHI, that paragraphs 5 and 6 dealt with two

separate aspects: the former referred to a Law for the Promotion of the Ainu culture and the latter mentioned jurisprudence recognizing the Ainu as a minority people.

42. Paragraph 6 was adopted.

Paragraph 7

43. Paragraph 7 was adopted.

Paragraph 8

44. Mr. TANG, supported by Mr. BOSSUYT and Mr. FALL, expressed the opinion that the Committee must not interfere in the domestic affairs of a State and that the Committee was venturing onto dangerous ground when it stated in its concluding observations that some military bases in Japan should be reduced.

45. Mr. ABOUL-NASR commented that the Committee was not making a statement, but reporting claims made by the population of Okinawa through some non-governmental organizations.

46. Mr. DIACONU said that there were military bases in other parts of the world, whose presence might be perceived as an infringement of the fundamental rights of some ethnic groups. In regard to Japan, it was essential to find a way of saying that the population of Okinawa thought that it was being victimized because of the presence or activities of certain military bases. He proposed that it should be implied that the situation on the island seemed to lead to discrimination against the population of the island, without giving any further details.

47. Mr. BOSSUYT endorsed Mr. Diaconu's proposal but urged that the phrase indicating that the population of Okinawa sought to be recognized as a specific ethnic group be retained.

48. Mr. YUTZIS said that, in his view, the issue certainly was the concern of the Committee, since the presence of military bases appeared to be affecting the rights of some ethnic groups.

49. The CHAIRMAN suggested that the Country Rapporteur reword the paragraph to incorporate the suggested amendments. He proposed that the Committee members come back to paragraph 8 at a subsequent meeting.

50. It was so decided.

Paragraph 9

51. Mr. ABOUL-NASR said that he wondered to what extent the Committee could object to a State party's interpretation of a provision of the Convention.

52. Mr. VALENCIA RODRIGUEZ said that he believed that the Committee was fully entitled to interpret the Convention for the purpose of implementing it. In the case in point, the

term "descent" found in article 1 of the Convention had to be given a different interpretation to that put on it by the Japanese Government.

53. Paragraph 9 was adopted.

Paragraph 10

54. Mr BOSSUYT, supported by Mr. de GOUTTES and Mr. YUTZIS, stressed that the provisions of the Convention were not directly applicable in Japanese domestic law and said that the phrase stating that the provisions of the Convention were rarely applied by national courts should be replaced by wording to the effect that they were rarely referred to by those courts.

55. Paragraph 10, as amended, was adopted.

Paragraph 11

56. Mr. BOSSUYT proposed, for the same reasons as those already mentioned in respect of paragraph 10, to delete the reference to the fact that the Convention was not self-executory in Japan.

57. Paragraph 11, as amended, was adopted.

Paragraph 12

58. Mr. ABOUL-NASR observed that article 4 of the Convention had already been mentioned in paragraph 11 and wondered if it was necessary to refer to it again in detail in paragraph 12.

59. Mr. DIACONU insisted that paragraph 12, which concerned Japan's reservation, should be retained as it stood in the draft text.

60. Paragraph 12 was adopted.

Paragraph 13

61. Mr. VALENCIA RODRIGUEZ proposed that, in the first sentence, the reference to paragraph 4 of the Convention be deleted, since it had already appeared in several places in the previous paragraphs.

62. Paragraph 13, as amended, was adopted.

Paragraph 14

63. Paragraph 14 was adopted.

Paragraph 15

64. Mr. ABOUL-NASR urged the Committee to be cautious. It appeared from the wording of paragraph 15 that the Committee was accusing the State party of not adopting adequate measures in response to violence against the Korean minority. In fact the Committee had received information or reports about the lack of any such measures. He therefore proposed that "The Committee is concerned about violent action against Koreans" be replaced with "The Committee is concerned about reports on violent actions against Koreans".

65. Paragraph 15, as amended, was adopted.

Paragraph 16

66. Paragraph 16 was adopted.

Paragraph 17

67. Mr. ABOUL-NASR said that the first sentence of the paragraph enumerated the fields in which the Korean minority suffered from discrimination. Since the list covered all areas of the life of a society, it would seem wiser to delete it and to make the sentence more general so that it would read: "The Committee is concerned about discrimination affecting the Korean minority".

68. Paragraph 17, as amended, was adopted.

Paragraph 18

69. Mr. DIACONU proposed the deletion of the first sentence of the paragraph.

70. Paragraph 18, as amended, was adopted.

Paragraph 19

71. Mr. RECHETOV proposed the deletion of the first part of the last sentence of the paragraph, which would then begin: "The Committee recommends the State party". He also pointed out that the expression "to do so" was used twice in the same sentence.

72. Mr. DIACONU did not object to Mr. Rechetov's proposal, but considered that, although a person's name was an essential element of their ethnic identity, the Committee would make no reference to that issue if the first part of the last sentence were deleted.

73. Mr. THORNBERRY proposed that "style" be deleted from the first sentence.

74. Mr. VALENCIA RODRIGUEZ did not endorse Mr. Rechetov's proposal, since he did not believe that it added anything to paragraph 19.

75. The CHAIRMAN proposed that the Committee members come back to the paragraph at a later stage.

76. It was so decided.

Paragraph 20

77. Mr. VALENCIA RODRIGUEZ proposed that "while noting the recent increase in refugees" should be added in the first line after "The Committee".

78. Mr. PILLAI proposed that the term "recognized" be deleted from the first sentence.

79. Paragraph 20, as amended, was adopted.

Paragraph 21

80. Paragraph 21 was adopted.

Paragraph 22

81. Mr. ABOUL-NASR asked why a reference had been made to gender in that paragraph and whether the Committee intended to use that term in all its draft concluding observations.

82. Mr. VALENCIA RODRIGUEZ recalled that the previous year the Committee had decided to issue a General Recommendation on gender-related dimensions of racial discrimination, in which it had asked States parties to supply information about discrimination against women in their periodic reports.

83. Ms. Mc DOUGALL asked what justification there was for including the last part of paragraph 22.

84. Mr DIACONU said that he was also puzzled on that count and proposed that the whole of the last part of paragraph 22 be deleted.

85. The CHAIRMAN stated that the Committee would decide on that paragraph after the Country Rapporteur had submitted a new draft paragraph taking account of the comments made.

86. It was so decided.

Paragraph 23

87. Paragraph 23 was adopted with an editorial amendment proposed by Mr Yutzis.

Paragraph 24

88. Mr. TANG proposed that the words "some members" be replaced with "the Committee".

89. The CHAIRMAN explained that, in the past, the Committee had agreed to use that formula in order to reflect the individual views of Committee members.

90. Mr. de GOUTTES, like Mr Tang, thought that it might be better to employ the words "the Committee" so as to indicate consensus within the Committee.

91. Mr. YUTZIS said that by retaining the words "some members" the Committee ran the risk of pointing up the lack of consensus on the matter and therefore of weakening the impact of the paragraph. The Committee had not employed that wording in the draft concluding observations on Argentina.

92. Mr. FALL proposed that "requested" be replaced with "recommends" at the end of the paragraph.

93. Paragraph 24, as amended, was adopted.

Paragraphs 25 and 25

94. Paragraphs 25 and 26 were adopted.

Paragraph 27

95. Mr. BOSSUYT proposed that the paragraph be amended by inserting "submit its third periodic report jointly with its fourth periodic report, due on 14 January 2003, and that it addresses" after "the State party", the remainder of the paragraph staying unchanged.

96. Paragraph 27, as amended, was adopted.

97. The CHAIRMAN said that the Committee would re-examine paragraphs 8, 19 and 22 of the draft concluding observations on the initial and second periodic reports of Japan at a later stage.

The meeting rose at 1 p.m.